



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

June 15, 2004

Mr. Peter G. Smith  
Nichols, Jackson, Dillard, Hager & Smith, L.L.P  
500 North Akard, Suite 1800  
Dallas, Texas 75201

OR2004-4855

Dear Mr. Smith:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 203426.

The Dallas Central Appraisal District (the "district"), which you represent, received a request for a particular study regarding multi-family cap rates commissioned by the district. You state that the district has provided a redacted version of the requested study to the requestor. You claim that the information you seek to withhold from the study at issue is excepted from disclosure under sections 552.101, 552.110, and 552.111 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information. We have also considered comments submitted by the requestor, and by counsel for the requestor. See Gov't Code § 552.304 (providing that member of public may submit comments stating why information should or should not be released).

Section 552.111 of the Government Code excepts from disclosure "an interagency or intraagency memorandum or letter that would not be available by law to a party in litigation with the agency." In Open Records Decision No. 615 (1993), this office reexamined the predecessor to the section 552.111 exception in light of the decision in *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408 (Tex. App.—Austin 1992, no writ), and held that section 552.111 excepts only those internal communications consisting of advice, recommendations, opinions, and other material reflecting the deliberative or policymaking processes of the governmental body. Open Records Decision No. 615 at 5-6 (1993).

The preliminary draft of a policymaking document that has been released or is intended for release in final form is excepted from disclosure in its entirety under section 552.111 because such a draft necessarily represents the advice, recommendations, or opinions of the drafter as to the form and content of the final document. Open Records Decision No. 559 at 2 (1990). Furthermore, section 552.111 is applicable to communications that involve a

governmental body's consultants. *See* Open Records Decision Nos. 631 at 2 (1995) (section 552.111 encompasses information created for governmental body by outside consultant acting at governmental body's request and performing task that is within governmental body's authority), 563 at 5-6 (1990) (private entity engaged in joint project with governmental body may be regarded as its consultant). Section 552.111 is not applicable, however, to communications with a party with which the governmental body has no privity of interest or common deliberative process. *See* Open Records Decision No. 561 at 9 (1990).

You indicate that the submitted information consists of a draft version of a policymaking document that has been or will be made public in final form.<sup>1</sup> Based on your representations and our review, we conclude that the submitted information is excepted from disclosure pursuant to section 552.111 of the Government Code and may be withheld. *But see* Gov't Code § 552.022(a)(1) (completed report made for governmental body is public information and may not be withheld unless confidential under other law). As we are able to make this determination, we need not reach your other claimed exceptions to disclosure.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the

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<sup>1</sup> We note that the requestor disputes the district's characterization of the submitted document as a draft document to be made public in final form. Because this office cannot resolve disputes of fact in the open records process, we must rely on the representations of the district that submitted document is a draft version of a policymaking document. *See* Open Records Decision Nos. 554 (1990), 552 (1990).

governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



David R. Saldivar  
Assistant Attorney General  
Open Records Division

DRS/seg

Ref: ID# 203426

Enc: Submitted documents

c: Mr. Paul Pennington  
P.E. Pennington & Company, Inc.  
4004 Beltline Road, Suite 107  
Addison, Texas 75001  
(w/o enclosures)

Mr. Jason C. Marshall  
Winstead, Sechrest & Minick  
1201 Elm Street, Suite 5400  
Dallas, Texas 75270  
(w/o enclosures)